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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AUDLEY BARRINGTON LYON, JR., <i>et al.</i> ,	)	
	)	No. 3:13-cv-05878-EMC
Plaintiffs,	)	
	)	STIPULATED AND [PROPOSED] PROTECTIVE
vs.	)	ORDER GOVERNING CONFIDENTIAL
	)	INFORMATION DISCLOSED THROUGH
U.S. IMMIGRATION & CUSTOMS	)	INFORMAL DISCOVERY TO SUPPORT
ENFORCEMENT, <i>et al.</i> , <sup>1</sup>	)	SETTLEMENT DISCUSSIONS & FOR
	)	FACILITATING CLASS COUNSEL ACCESS TO
Defendants.	)	CLASS

<sup>1</sup> Thomas S. Winkowski, Principal Deputy Assistant Director, ICE, is substituted under Fed. R. Civ. P. 25(d) for former Acting Director, John Sandweg, who was named as a defendant in this action in his official capacity but resigned from this position effective February 21, 2014.

1 **PURPOSES & LIMITATIONS**

2 1.1 The parties anticipate that during informal discovery in this action they will  
3 exchange documents, items, material, and other information that contain sensitive,  
4 confidential, proprietary, and/or private information that merits special protection from  
5 public disclosure. This Stipulated Protective Order does not govern any future formal  
6 discovery related to the merits of this case and applies only to (a) class member  
7 information provided to facilitate Class Counsel's notice of class certification and access to  
8 class members and (b) informal settlement discussions. Accordingly, the parties hereby  
9 stipulate to and petition the Court to enter the following Stipulated Protective Order for  
10 purposes of informal discovery in support of settlement discussions and identification of  
11 class members only. *See* ECF No. 31 (regarding notice to class); ECF No. 35 (ordering  
12 necessary informal discovery prior to settlement conference). Such sensitive and  
13 confidential information may include (a) security arrangements, security plans, practices,  
14 policies, procedures, protocols or guidelines, security audits or reviews, building layouts,  
15 documents reflecting architectural plans, blueprints or schematics whose efficacy may be  
16 undermined by disclosure to the public, including but not limited to floor plans or plans  
17 specific to building security features, enhancements or vulnerabilities; (b) information  
18 subject to the Privacy Act (codified at 5 U.S.C § 552a) or the official information privilege  
19 that is protected from disclosure, in order to comply with the law; and (c) material  
20 containing private and confidential third-party information protected by the right to  
21 privacy guaranteed in the Federal Constitution and the First Amendment, in order to  
22 protect the privacy interest of those third-parties.  
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1           1.2     The parties acknowledge that this Order does not confer blanket protections  
2 on all disclosures or responses to discovery and that the protection it affords from public  
3 disclosure and use extends only to the limited information or items that are entitled to  
4 confidential treatment under the applicable legal principles. The parties further  
5 acknowledge, as set forth in section 12, below, that this Stipulated Protective Order does  
6 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth  
7 the procedures that must be followed and the standards that will be applied when a party  
8 seeks permission from the Court to file material under seal.  
9

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11           1.3     Pursuant to 5 U.S.C. § 552a(b)(11), this Stipulated Protective Order  
12 authorizes Defendants to produce to counsel for Plaintiffs and the Court discoverable  
13 information pursuant to Fed. R. Civ. P. 26(c) sought by Plaintiffs during informal discovery  
14 prior to settlement discussions, as well as identifying information regarding class  
15 members, containing unredacted, identifying information of third-parties, without  
16 obtaining prior written consent of third parties whose names, addresses, birth dates, and  
17 other identifying information may be present in such documents and without requiring  
18 officials of the United States to pre-screen each document for objections under Federal Rule  
19 of Civil Procedure 26(c) or the Privacy Act, 5 U.S.C. § 552a, and without presenting those  
20 objections to this Court for a decision regarding disclosure. To the extent the relevant  
21 statute or regulation allows the disclosure of information pursuant to a court order, this  
22 Order constitutes such a court order and authorizes disclosure of that information.  
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25  
26           1.4     The Parties agree that the terms of this Protective Order will govern the  
27 production of information in response to Plaintiffs' informal discovery requests needed for  
28 all sides to evaluate the case for settlement purposes as well as the production of

1 identifying information regarding class members for purposes of providing notice of class  
2 certification and facilitating Class Counsel's access to class members to the extent that such  
3 production contains "Confidential Information" as defined in section 2 and designated  
4 according to section 5. The terms of this Order shall also govern the safeguarding of such  
5 information by all individuals referenced in sections 7 and 12.

7 **2. DEFINITIONS**

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.2 "CONFIDENTIAL" Information or Items: any information (regardless of how  
11 it is generated, stored or maintained) or tangible things that are not publicly available and  
12 qualify for protection under Federal Rule of Civil Procedure 26(c) and/or the Privacy Act, 5  
13 U.S.C. § 552a including: (a) the names, alien numbers, and detention facilities of the  
14 particular individual(s) to whom the information relates and (b) any personally identifying  
15 information related to third parties other than the individual whose information is being  
16 sought, such as, but not limited to, information regarding familial relatives of individuals.

17 2.3. Consulting Counsel: attorneys who are not Counsel of Record, but are (1)  
18 affiliated with or employed by a law firm, agency, or organization that has appeared on  
19 behalf of a Party and (2) consulted by a Party or by Counsel of Record for the purpose of  
20 litigating this action.

21 2.4 Counsel of Record: Counsel (as well as their support staff) who appear or  
22 have appeared in this action on behalf of a Party in this action.

23 2.5 Designating Party: a Party or Non-Party that designates information or items  
24 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

1           2.6    Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other  
3 things, testimony, transcripts, and tangible things), that are produced or generated in  
4 disclosures or responses to discovery in this matter.  
5

6           2.7    Expert: a person with specialized knowledge or experience in a matter  
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
8 expert witness or as a consultant in this action.  
9

10          2.8    Non-Party: any natural person, partnership, corporation, association, or  
11 other legal entity who is not named as a Party to this action.

12          2.9    Party: any party to this action, including all of its officers, directors,  
13 employees, consultants, retained experts, and counsel (including their support staffs).  
14

15          2.10   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
16 Material in this action.

17          2.11   Protected Material: any Disclosure or Discovery Material that is designated  
18 as "CONFIDENTIAL."  
19

20          2.12   Receiving Party: a Party that receives Disclosure or Discovery Material from  
21 a Producing Party.

22    **3.    SCOPE**

23          3.1    The protections conferred by this Stipulation and Order cover not only  
24 Protected Material (as defined above), but also (a) any information copied or extracted  
25 from Protected Material; (b) all copies, excerpts, summaries, or compilations of Protected  
26 Material; and (c) any testimony, conversations, or presentations by Parties or their Counsel  
27 that might reveal Protected Material. However, the protections conferred by this  
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1 Stipulation and Order do not cover the following information: (a) any information that is in  
2 the public domain at the time of disclosure to a Receiving Party or becomes part of the  
3 public domain after its disclosure to a Receiving Party as a result of publication not  
4 involving a violation of this Order, including becoming part of the public record through  
5 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
6 disclosure or obtained by the Receiving Party after the disclosure from a source who  
7 obtained the information lawfully and under no obligation of confidentiality to the  
8 Designating Party.  
9

10  
11 3.2 Aggregate information that does not permit the identification of the  
12 particular individuals to whom the information relates is not protected even if it is derived  
13 from source documents that are designated "Confidential."  
14

#### 15 **4. DURATION**

16 Even after final disposition of this litigation, the confidentiality obligations imposed  
17 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or  
18 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
19 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
20 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,  
21 trials, or reviews of this action, including the time limits for filing any motions or  
22 applications for extension of time pursuant to applicable law.  
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#### 24 **5. DESIGNATION OF CONFIDENTIAL INFORMATION**

25  
26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
27 Party or Non-Party that designates information or items for protection under this Order  
28 must take care to limit any such designation to specific material that qualifies under the

1 appropriate standards. The Designating Party must designate for protection only those  
2 parts of material, documents, items, or oral or written communications that qualify – so  
3 that other portions of the material, documents, items, or communications for which  
4 protection is not warranted are not swept unjustifiably within the ambit of this Order.  
5

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
7 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
8 to unnecessarily encumber or retard the case development process or to impose  
9 unnecessary expenses and burdens on other parties) expose the Designating Party to  
10 sanctions.  
11

12 If it comes to a Designating Party's attention that information or items that it  
13 designated for protection do not qualify for protection, the Designating Party must  
14 promptly notify – within ten (10) business days – all other Parties that it is withdrawing  
15 the mistaken designation.  
16

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
18 Order or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies  
19 for protection under this Order must be clearly so designated before the material is  
20 disclosed or produced.  
21

22 5.3 Designation in conformity with this Order requires:

23 (a) **for information in documentary form** (e.g., paper or electronic  
24 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),  
25 that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains  
26 protected material. If only a portion or portions of the material on a page qualifies for  
27 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
28

1 making appropriate markings in the margins). “Confidential Information” set forth in a  
2 response to an interrogatory may be so designated by including the word “Confidential” in  
3 the response.

4  
5 A Party or Non-Party that makes original documents or materials available for  
6 inspection need not designate them for protection until after the inspecting Party has  
7 indicated which material it would like copied and produced. During the inspection and  
8 before the designation, all of the material made available for inspection shall be deemed  
9 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied  
10 and produced, the Producing Party must determine which documents, or portions thereof,  
11 qualify for protection under this Order. Then, before producing the specified documents,  
12 the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains  
13 Protected Material. If only a portion or portions of the material on a page qualifies for  
14 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
15 making appropriate markings in the margins).

16  
17 (b) for information produced in some form other than documentary and for  
18 any other tangible items, that the Producing Party affix in a prominent place on the exterior  
19 of the container or containers in which the information or item is stored the legend  
20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
21 protection, the Producing Party, to the extent practicable, shall identify the protected  
22 portion(s).

23  
24 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
25 to designate qualified information or items does not, standing alone, waive the Designating  
26 Party’s right to secure protection under this Order for such material. Upon timely



1 correction of a designation, the Receiving Party must make reasonable efforts to assure  
2 that the material is treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4  
5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's  
7 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
8 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
9 does not waive its right to challenge a confidentiality designation by electing not to mount  
10 a challenge promptly after the original designation is disclosed.

11  
12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
13 process by providing written notice of each designation it is challenging and describing the  
14 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
15 written notice must recite that the challenge to confidentiality is being made in accordance  
16 with this specific paragraph of the Protective Order. The parties shall attempt to resolve  
17 each challenge in good faith and must begin the process by conferring directly (in voice to  
18 voice dialogue; other forms of communication are not sufficient) within fourteen (14)  
19 business days of the date of service of notice. In conferring, the Challenging Party must  
20 explain the basis for its belief that the confidentiality designation was not proper and must  
21 give the Designating Party an opportunity to review the designated material, to reconsider  
22 the circumstances, and, if no change in designation is offered, to explain the basis for the  
23 chosen designation. A Challenging Party may proceed to the next stage of the challenge  
24 process only if it has engaged in this meet and confer process first or establishes that the  
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1 Designating Party is unwilling to participate in the meet and confer process in a timely  
2 manner.

3         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality  
5 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within  
6 twenty (20) business days of the initial notice of challenge or within fourteen (14) business  
7 days of the parties agreeing that the meet and confer process will not resolve their dispute,  
8 whichever is later. Each such motion must be accompanied by a competent declaration  
9 affirming that the movant has complied with the meet and confer requirements imposed by  
10 paragraph 6.2. Failure by the Designating Party to make such a motion, including the  
11 required declaration, within the time allotted by this paragraph shall automatically waive  
12 the confidentiality designation for each challenged designation. In addition, the  
13 Challenging Party may file a motion challenging a confidentiality designation at any time if  
14 there is good cause for doing so, including a challenge to the designation of a deposition  
15 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
16 accompanied by a competent declaration affirming that the movant has complied with the  
17 meet and confer requirements imposed by the paragraph 6.2.

18         The burden of persuasion in any such challenge proceeding shall be on the  
19 Designating Party. Frivolous challenges and those challenges made for an improper  
20 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)  
21 may expose the Challenging Party to sanctions. Unless the Designating Party has waived  
22 the confidentiality designation by failing to file a motion to retain confidentiality as  
23 described in this paragraph (paragraph 6.3), all parties shall continue to afford the material

in question the level of protection due under this Order for Confidential Information until the Court rules on the challenge.

**7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for attempting to settle this litigation and identifying class members for the purpose of providing notice to class members of class certification and facilitating Class Counsel's access to class members. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 12.3 below (re: Return of Confidential Information).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, information designated as "Confidential," including the portion of any document containing "Confidential" information, may be disclosed by a Receiving Party only to the following persons and only to the extent necessary to litigate this action:

(a) Counsel of Record for Plaintiffs, Counsel of Record for Defendants, Consulting Counsel, and any support staff of such counsel assisting in this action with an appropriate need to know;

1 (b) Experts of the Receiving Party to whom disclosure is reasonably  
2 necessary for this litigation, including evaluation of settlement positions, subject to  
3 paragraph 7.3;

4  
5 (c) Any other person mutually authorized by the Parties to examine such  
6 information, subject to paragraph 7.3; and/or

7 (d) The Court and its personnel, including court reporters.

8 All persons listed in paragraph 7.2(a) to whom "Confidential" information is  
9 disclosed are hereby prohibited from disclosing to, or otherwise discussing with, any  
10 person other than those listed in paragraph 7.2(b)-(d), any information designated as  
11 "Confidential Information," except as provided in this Stipulated Protective Order.

12  
13 7.3 Acknowledgment and Agreement to Be Bound (Exhibit A). All persons listed  
14 in paragraphs 7(b) and (c) to whom "Confidential Information" is disclosed shall first be  
15 required to read the terms of this Stipulated Protective Order and sign a copy of the  
16 Acknowledgment and Agreement to Be Bound by Protective Order, attached hereto as  
17 Exhibit A. Each signed Acknowledgment form shall be maintained by counsel for the  
18 Plaintiffs or counsel for the Defendants as appropriate, depending on the Party seeking to  
19 disclose Confidential information.  
20

21  
22 7.4 Use of "Confidential" Information in Court Filings.

23 Without written permission from the Designating Party or a court order secured  
24 after appropriate notice to all interested persons, a Party may not file in the public record  
25 any "Confidential" Information. In the event a Party wishes to use any "Confidential"  
26 Information produced under this Stipulated Protective Order in a court filing, such filings  
27 shall either be: (a) filed in accordance with Civil Local Rule 79-5 or (b) redacted to  
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preclude any Confidential Information from entering into the public record. Should a Party elect to redact any and all Confidential Information from a pleading rather than file that pleading in accordance with Civil Local Rule 79-5, the filing Party will serve such redacted pleading on the non-filing Party via e-mail rather than via CM/ECF, allowing the non-filing Party three (3) business days to raise any objections concerning the release of Confidential Information, before filing such redacted pleading with the Court via CM/ECF. This provision does not apply to the Parties' submission of "Confidential" Information to the Magistrate Judge assigned to proceed over settlement conferences in this case, provided those submissions are not filed in the public record.

7.5 Use of "Confidential" Information at Hearings.

The parties do not anticipate using at any hearing any "Confidential" information disclosed during informal discovery prior to settlement discussions or for the purpose of identifying class members to facilitate notice of class certification and Class Counsel's access to class members. Should such need arise, the Parties will follow the instructions for use of "Confidential" information in Court Filings as detailed in paragraph 7.4.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

9.1 The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

9.2 The Parties agree that any discovery sought from Non-Parties who owe a duty of confidentiality to one or more Parties can be disclosed without violating that duty

1 of confidentiality if such discovery would otherwise be covered by this Protective Order  
2 and disclosure is made in accordance with this Protective Order. Because this Protective  
3 Order is sufficient to protect such confidential information, a duty of confidentiality to one  
4 of the Parties shall not be a basis for any Non-Party to withhold covered records or  
5 information sought through third-party discovery in this litigation.  
6

7 9.3 In the event that a Party is required by a valid discovery request to produce a  
8 Non-Party's confidential information which in that Party's possession, and the Party is  
9 subject to an agreement with the Non-Party not to produce the Non-Party's confidential  
10 information, then the Party shall:  
11

12 (a) promptly notify in writing the Requesting Party and the Non-Party  
13 that some or all of the information requested is subject to a confidentiality agreement with  
14 a Non-Party;  
15

16 (b) promptly provide the Non-Party with a copy of the Stipulated  
17 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
18 specific description of the information requested; and  
19

20 (c) make the information requested available for inspection by the Non-  
21 Party.  
22

23 9.4 If the Non-Party fails to object or seek a protective order from this Court  
24 within fourteen (14) business days of receiving the notice and accompanying information,  
25 the Receiving Party may produce the Non-Party's confidential information responsive to  
26 the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party  
27 shall not produce any information in its possession or control that is subject to the  
28

1 confidentiality agreement with the Non-Party before a determination by the Court.<sup>2</sup> Absent  
2 a court order to the contrary, the Non-Party shall bear the burden and expense of seeking  
3 protection in this court of its Protected Material.

4  
5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
7 Protected Material to any person or in any circumstance not authorized under this  
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the  
9 Designating Party of the unauthorized disclosure(s), (b) use its best efforts to retrieve all  
10 unauthorized copies of the Protected Material, (c) inform the person(s) to whom  
11 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
12 person(s) execute the "Acknowledgment and Agreement to Be Bound" that is attached  
13 hereto as Exhibit A within ten (10) business days of learning of the unauthorized  
14 disclosure.  
15  
16

17 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
18 **MATERIAL**

19 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
20 produced material is subject to a claim of privilege or other protection, the obligations of  
21 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
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23  
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27 <sup>2</sup> The purpose of this provision is to alert the interested parties to the existence of  
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect  
its confidentiality interests in this Court.



1 **12. MAINTAINING CONFIDENTIAL INFORMATION**

2 The Parties shall maintain “Confidential Information” as follows:

3 12.1 Counsel of Record and anyone to whom “Confidential Information” has been  
4 disclosed in accordance with section 7.2 shall maintain all remaining “Confidential”  
5 Information pursuant to the terms of this Stipulated Protective Order, subject to further  
6 order by this Court. Within sixty (60) days after the final disposition of this action – as  
7 defined by section 4, including any and all appeals – all discovery and copies thereof in the  
8 possession of Plaintiffs and anyone to whom “Confidential Information” has been disclosed  
9 in accordance with section 7.2 shall be returned to the Defendants or destroyed, except as  
10 this Court may otherwise order, in accordance with section 12.3, but excluding the archival  
11 copies for counsel’s records contemplated by paragraph 12.2.

12 12.2 Notwithstanding paragraphs 12.1 and 12.3, counsel of record for Plaintiffs  
13 and counsel of record for Defendants may each maintain one (1) complete set of discovery  
14 for their records, provided that such counsel maintain the confidential nature of the  
15 discovery. Also notwithstanding paragraphs 12.1 and 12.3, Counsel are entitled to retain  
16 an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
17 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
18 work product, and consultant and expert work product, even if such materials contain  
19 Protected Material. Any such archival copies that contain or constitute Protected Material  
20 remain subject to this Protective Order as set forth in Section 4 (Duration).

21 12.3 With the exception of the archival copies contemplated by paragraph 12.2,  
22 within sixty (60) days after the final disposition of this action, including any appeals and  
23 any ongoing and/or permanent injunctions and as defined in section 4, each Receiving  
24

1 Party must return all Protected Material to the Producing Party or destroy such material.

2 As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
3 compilations, summaries, and any other format reproducing or capturing any of the  
4 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving  
5 Party must submit a written certification to the Producing Party (and, if not the same  
6 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by  
7 category, where appropriate) all the Protected Material that was returned or destroyed and  
8 (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
9 summaries or any other format reproducing or capturing any of the Protected Material.  
10  
11

12 **13. MODIFICATIONS AND CONTINUING EFFECT**

13 13.1 Any Party may apply to this Court at any time, upon proper notice, for a  
14 modification of this Stipulated Protective Order with respect to the handling or designation  
15 of any document or for any other purpose. This Protective Order shall continue in force  
16 until amended or superseded by express order of the Court, and shall survive any final  
17 judgment or settlement in this litigation. This Parties shall take such reasonable measures  
18 as are necessary and appropriate to prevent the disclosure of Protected Material, through  
19 inadvertence or otherwise, after the conclusion of this action.  
20  
21

22 13.2 This Stipulated Protective Order shall be binding upon any present or future  
23 party to the *Lyon, et al. v. ICE, et al.*, No. 13-cv-05878-EMC (N.D. Cal.), litigation.

24 13.3 The terms of this Stipulated Protective Order shall survive the termination of  
25 this action after its final disposition for purposes of enforcing this Stipulated Protective  
26 Order.  
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1 **14. RIGHTS OF PARTIES**

2 14.1. Nothing in this Stipulated Protective Order shall be construed as a waiver of  
3 any defense, right, or claim by either party, nor shall this Stipulated Protective Order affect  
4 the right of any Producing Party to seek additional protection against the disclosure of any  
5 documents or materials, or of any Receiving Party to seek additional disclosures.  
6

7 14.2. This Stipulated Protective Order shall be effective and enforceable upon  
8 entry by the Court, except that the Parties shall agree to abide by its terms prior to entry of  
9 any order.  
10

11 14.3 Agreement to this Protective Order does not waive any rights of any Party to  
12 assert, and/or object to, a claim of any privilege as to these or similar documents.

13 14.4 Nothing in this Stipulated Protective Order shall preclude the disclosure of  
14 any "Confidential" Information with respect to an individual who affirmatively consents in  
15 writing to the disclosure of his/her own private information.  
16

17 14.5 This Stipulated Protective Order shall not preclude any Party from disclosing  
18 publicly-available information.  
19

20  
21 THE PARTIES SO STIPULATE, THROUGH COUNSEL OF RECORD.

22 Dated: May 30, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

23 By: /s/ Robert P. Varian  
24 ROBERT P. VARIAN  
25 M. TODD SCOTT  
26 ALEXANDER K. TALARIDES  
27 ALEXIS YEE-GARCIA  
28 CHRISTINE M. LOUIE

1 Dated: May 30, 2014

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA

2  
3 By: /s/ Julia Harumi Mass  
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4 JINGNI (JENNY) ZHAO (SBN 284684)  
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9 AMERICAN CIVIL LIBERTIES UNION  
10 NATIONAL PRISON PROJECT

11 By: /s/ Carl Takei  
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12 915 15th Street N.W., 7th Floor  
13 Washington, DC 20005  
14 Telephone: (202) 393-4930  
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Email: ctakei@aclu.org

16 *Attorneys for Plaintiffs*

17 Dated: May 30, 2014

OFFICE OF IMMIGRATION LITIGATION,  
18 U.S. DEPT OF JUSTICE – CIVIL DIVISION

19 STUART DELERY  
Assistant Attorney General

20  
21 COLIN A. KISOR  
Acting Director

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23 ELIZABETH J. STEVENS  
Assistant Director

24  
25 By: /s/ Jennifer A. Bowen  
JENNIFER A. BOWEN  
26 KATHERINE A. SMITH

27  
28 *Attorneys for Defendants*

IT IS SO ORDERED.

Dated: June <sup>3</sup>, 2014

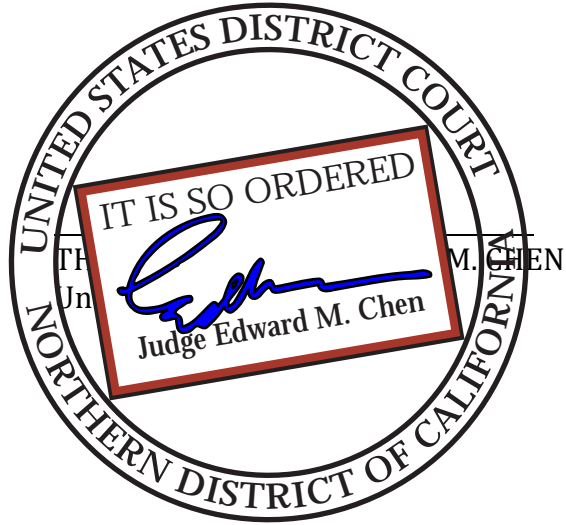


EXHIBIT A

**ACKNOWLEDGMENT OF STIPULATED PROTECTIVE ORDER**

I, \_\_\_\_\_, am associated with the litigation in *Lyon, et al. v. ICE, et al.*, No. 13-cv-05878-EMC (N.D. Cal.) in the capacity of \_\_\_\_\_.

I acknowledge reading and understanding the Stipulated Protective Order Governing Confidential Information issued in the *Lyon* action on \_\_\_\_\_, and I agree to be bound by all provisions thereof.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

SIGNATURE: \_\_\_\_\_